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THIS ARTICLE CRITICIZES THE U.S. OFFICE OF EDUCATION'S (USOE) "INEFFECTIVE" ENFORCEMENT OF SCHOOL DESEGREGATION AS REQUIRED UNDER THE 1964 CIVIL RIGHTS ACT, TITLE VI, AND THE DISCRIMINATORY DISTRIBUTION OF FEDERAL AID TO EDUCATION. IT IS FELT THAT DESPITE THE NONDISCRIMINATION REQUIREMENTS OF SECTION 601 OF THE TITLE FEDERAL AID TO EDUCATION OFTEN "BLATANTLY" DISCRIMINATES AGAINST NEGRO STUDENTS. THE GUIDELINES FOR COMPLIANCE WITH TITLE VI, ISSUED IN APRIL 1965, ARE SAID TO BE INADEQUATE. LATER GUIDELINES (1966) ATTEMPTED TO CORRECT THE FAILURES OF THE FIRST SET IN ORDER TO ENFORCE COMPLIANCE. HOWEVER, IT STILL APPEARS THAT ENFORCEMENT IS HAMPERED BY THE PROCEDURES REQUIRED FOR TERMINATING FINANCIAL ASSISTANCE TO SCHOOL SYSTEMS IN VIOLATION OF THE GUIDELINES. LACK OF A USOE ENFORCEMENT STAFF AND VACILLATION AT THE POLICY AND DECISION-MAKING LEVELS FURTHER DELAY THE DESEGREGATION MANDATED BY TITLE VI. MOREOVER, SINCE TITLE VI IS NOT SELF-ENFORCING, LOCAL ACTION ON A BROAD SCALE WILL BE NEEDED TO IMPLEMENT IT. THIS ARTICLE WAS PUBLISHED IN THE "PHI DELTA KAPPAN," VOLUME 47, NUMBER 9, MAY 1966. (NH)

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The Civil Rights Fiasco In Public Education

An analysis, by an NAACP consultant, of failures to enforce school provisions of the 1964 Civil Rights Act. Despite these failures, there are hopeful signs that the new USOE Guidelines will speed desegregation timetables in the South.

By MYRON LIEBERMAN

PERHAPS no single event engendered as much optimism over the prospects for eradicating racial discrimination in public education as enactment of the Civil Rights Act of 1964. Much of this optimism was based upon Title VI of the act, which provides in Section 601 that "No person in the United States shall, on grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

The enforcement of Section 601 is especially important to public education. Federal spending for education has increased from $4,650 million in 1964 to $6,328 million in 1965, and is expected to reach $8,711 million in 1966, almost eight per cent of the total revenues for public elementary and secondary schools. The dollar amounts are only part of the picture. The major federal appropriations for public schools flow from the Elementary and Secondary Education Act of 1965. The Johnson Administration avoided both the racial and religious issues which had previously held up large scale federal aid by emphasizing aid to children from low-income families, i.e., families with an income of $2,000 or less and from families on ADC. This approach made excellent educational as well as political sense, since the educational disabilities of such children are a more urgent problem than the acknowledged need to improve the education of middle- and upper-class children. However, although the formula for allocating aid under the Elementary and Secondary Education Act is geared to the number of low-income families in states and school districts, the act includes virtually no safeguards to insure that the funds appropriated are effectively—or even actually—used for the education of children from such families. In effect, the act provides for general aid to education distributed to school districts according to the number of children from low-income families in such districts.

In 1963, the median income of Negroes was only 53 per cent of that for the white population. Obviously, large-scale federal aid for the education of children from low-income families will be of enormous assistance to Negro children if such aid is used in a nondiscriminatory way. The sad truth is, however, that despite Section 601 the administration of federal aid to education, including aid for the education of children from low-income families, is frequently characterized by blatant discrimination against Negro students. Quite often, such discrimination is most widespread and most repressive precisely in the communities where there is greatest need to upgrade the education of Negro children. Overall, the extent of discrimination varies from school system to school system and its extent is somewhat imprecise, but it is clearly very substantial. The purpose of this article is to explain why this is so and to suggest some steps which might improve the situation.

Under Title VI, each federal department and agency extending financial assistance was directed to issue, subject to presidential approval, whatever regulations were needed to implement Section 601. The regulations concerning HEW programs were approved by the President on De-

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cember 3, 1964. They provided that a school system would be deemed in compliance if 1) it gave assurance of compilance with a final order of a United States court for desegregation of the system, or 2) it submitted a desegregation plan acceptable to the Commissioner of Education and assurances that the system would implement the plan.

Subsequently, several school systems submitted compliance plans which U. S. Commissioner of Education Francis Keppel deemed unacceptable. As a result, Keppel came under increasing pressure to formulate a more specific set of guidelines for school systems seeking compliance. Finally, on April 29, 1965, after considerable discussion and controversy between and within a number of federal agencies, Keppel issued a *General Statement of Policies Under Title VI of the Civil Rights Act of 1964 Respecting Desegregation of Elementary and Secondary Schools,* now universally known as "the Guidelines." A revised version of the Guidelines was issued on March 7, 1966. To a large extent, the effectiveness of Section 601 in public education depends upon the nature of the obligations to desegregate imposed by the Guidelines and the extent to which these obligations are enforced. It is important, therefore, to consider these matters carefully.

The 1965 Guidelines provided three methods of compliance with Title VI. One was by executing HEW Form 441, an Assurance of Compliance. However, school systems characterized by "any . . . practices characteristic of dual or segregated systems" were prohibited from executing an Assurance of Compliance. An Assurance of Compliance was supposed to be executed only by school systems in which segregation in any form is not a problem.

School systems subject to a final order of a United States court to desegregate the entire system were also to be regarded as in compliance, provided that the systems promised to comply with the court order and any future modifications. Finally, school systems still characterized by segregation in some form but not under a final court order to desegregate (the category into which most southern school systems fall) were required to submit a desegregation plan which the Commissioner deemed adequate to accomplish the purposes of the Civil Rights Act. The Guidelines required such plans to meet nonracial criteria for zoning; assignment; reassignment; transfer; faculty; and availability of services, facilities, and programs. School systems submitting desegregation plans had to desegregate at least four grades beginning in the 1965-66 school year, and the fall of 1967 had to be accepted as the target date for complete desegregation. Throughout this period, the school systems were to submit compliance reports concerning such matters as the racial distribution of children and staff in schools and attendance zones; the rules for assignment, reassignment, and transfer; and the status of any legal proceedings relating to desegregation.

Guidelines Relatively Ineffective

By the summer of 1965, it was evident that the Guidelines were not going to effectuate compliance with Section 601 in hundreds of school systems. This ineffectiveness was publicly conceded by U.S. Commissioner of Education Harold Howe II. In announcing revision of the Guidelines on March 7, 1966, Howe pointed out that about 180,000 Negro children were attending schools also attended by white children in the eleven Deep South states. This figure represented less than six per cent of the total number of Negro children in these states. As Howe pointed out, the Guidelines did not deal with discrimination in school systems which had not formally operated segregated school systems. Although he did not mention the enormous discrimination prevailing even in systems where some desegregation resulted from the Guidelines, Howe stated that "This year, the emphasis will be shifted from negotiation to performance" and that "Summing up, we are now concluding what some have called the 'paper compliance' phase of our Title VI operations."

In practice, the 1965 Guidelines did not bring about a substantial degree of compliance with Section 601. Strategies of evasion were—and are —based upon local conditions. Where there is a high degree of residential segregation, school boards have adopted strict geographical zones. Despite a specific HEW regulation prohibiting site selection to maximize segregation, new schools —often unnecessary ones if existing capacity were utilized on a nonracial basis—are being located to do just that. Indeed, one of the most disturbing aspects of the present situation is the lack of opposition to the frantic southern drive to build new schools where they will maximize segregation for many years to come.

Actually, there is far less residential segregation in large southern cities than in large northern communities. Thus most large southern communities seeking to avoid desegregation do so by adopting "freedom of choice" plans. Under these plans, pupils may elect to attend any school in the district which has space for them. The Guidelines permit such plans despite the fact that they are

usually adopted to bring about indirectly what Title VI forbids school systems to accomplish directly. According to the Guidelines, however, such plans must provide adequate opportunity to make a choice, ample notice of procedures for initial assignment, preregistration, enrollment, reassignment, transfer, assignment on a nonracial basis in cases of overcrowding, availability of transportation on a nonracial basis, and assurances that school personnel will not favor or penalize pupils for the choices they make.

During 1965-66, freedom of choice plans typically resulted in complete segregation or tokenism. Notice to Negro parents and students was minimal. The administrative procedures which had to be followed to challenge a school board action were typically designed to place the protester at an overwhelming disadvantage. For example, in Jefferson County, Alabama, parents who challenged the school board assignment had to apply for a transfer in person to an all-white agency in a segregated county office building. The school administration could postpone the required hearing at will without notice, but a parent failure to attend was deemed withdrawal of the application for transfer. Failure of the pupil to appear at any hearing, examination, or test required could also be deemed withdrawal of the application.

In many school districts, Negroes who enroll their children in white schools are subject to severe economic and physical coercion. Such coercion might be less effective if large numbers of Negroes enrolled in white schools, but this seldom happens. Thus heavy pressure on a small activist minority usually suffices to maintain tokenism or even complete segregation, e.g., the Jefferson County system, with 45,000 white and 18,000 Negro pupils, had not a single white or Negro student attending school with students of the other race from the initiation of its transfer plan in January, 1959, to the summer of 1965.

Freedom of choice plans would be less discriminatory if there were desegregation of teachers within school systems adopting such plans. In fact, the ramifications of teacher employment for Section 601 are much broader than is generally understood and required some elaboration. As long as schools are staffed on a segregated basis, it will be extremely difficult to achieve desegregation at the pupil level. The white community inevitably regards the white-teacher school as "our" school and seeks to transfer white pupils to it. Schools staffed entirely by Negro teachers are just as inevitably regarded as Negro schools, to which all Negro pupils must be directed.

Many communities operate low-enrollment schools which should be closed. In situations where the Negro school is closed, a common practice is to release all the Negro teachers on the ground that their jobs no longer exist. In many cases, experienced Negro teachers are released, while beginning white teachers are employed in the consolidated school or in the school system. The situation is analogous to the industrial issue of plant- or company-wide seniority. When a Negro school is discontinued, teacher tenure tends to be based upon seniority in the school being discontinued, not in the school system as a whole. The upshot is the dismissal of experienced Negro teachers simultaneously with the employment of new white teachers.

In many Negro communities, Negro teachers occupy important leadership positions. These teachers, and the Negro community generally, face a cruel dilemma when school boards threaten—unofficially but nonetheless unmistakably—to fire as many Negro teachers as possible if Negro children apply to white schools under a freedom of choice plan. In some districts, teacher contracts are held up until the deadline for Negro pupils to apply for transfer to white schools. Negro parents find it difficult to press for such transfers when they are likely to result in the wholesale dismissal of Negro teachers.

NEW GUIDELINES FORM BETTER BASIS FOR ACTION

HOW will the preceding problems be affected by the 1966 Guidelines? Clearly, the 1966 Guidelines provide a better basis for coping with them than the 1965 version did. For example, the 1965 Guidelines required only that "Steps shall also be taken toward the elimination of segregation of teaching and staff personnel in the schools resulting from prior assignments based on race, color, or national origin." By contrast, the 1966 Guidelines require "significant progress beyond what was accomplished for the 1965-66 school year in the desegregation of teachers assigned to schools on a regular full-time basis." This provision is especially important, because the revised Guidelines also require school authorities to close "small inadequate schools that were originally established for students of a particular race and are still used primarily or exclusively for the education of students of such race . . . if the facilities, teaching materials, or educational programs available to students in such a school are inferior to those generally available in the schools of the system." It is therefore likely that discrimination against Negro teachers will be an

even greater problem during 1966 than it has been in the past. This means that unless the 1966 Guidelines are enforced effectively, thousands of Negro teachers and administrators are likely to be dismissed, downgraded, or not employed solely on a racial basis during the year.

Under the 1966 Guidelines, a student must be given freedom of choice every year and the administration of freedom of choice plans includes a number of safeguards not present in the earlier Guidelines. The texts for the letter, explanatory notice, and freedom of choice plan to be sent to parents are prescribed by the Commissioner of Education. Parents and students may, however, indicate their choice of school in writing on other forms, and, so long as they are clear, such preferences may not be disregarded by school authorities. Choices may not be changed except under specified conditions, a safeguard designed to prevent coercion against Negro parents and children to change their choices. Choices must be honored unless overcrowding results, in which case students must be assigned on the basis of proximity to the school. Information concerning choices by individuals is not to be made public by the school system, and there are other provisions designed to ensure that freedom of choice plans cannot be used to block desegregation as they have in the past.

Despite these improvements in the Guidelines, widespread violation of Section 601 is likely to prevail for many years. The Guidelines must be enforced, and despite much brave talk, enforcement is minimal. Officially, enforcement is a staff responsibility of David Seeley, who heads USOE's Office of Equal Educational Opportunities. Seeley's good faith and dedication are widely accepted, but the crucial decisions and policies concerning enforcement are made at cabinet and presidential levels. At these levels, vigorous enforcement endangers other political objectives. Furthermore, the Office of Education, like so many other federal agencies, is extremely sensitive to congressional pressures, and congressmen are far more likely to protest vigorous enforcement than they are to protest the absence of it. When a congressman protests an act of enforcement, he usually does so on direct request of his constituents; the congressman who protects weak enforcement usually does so on behalf of persons outside his constituency, hence his involvement is not likely to be as urgent. Furthermore, the opposition to enforcement is not entirely from the South; if it were, enforcement would be much more vigorous.

Enforcement problems are different for new programs which do not require periodic allocations than for programs already under way. Technically, the Commissioner of Education need not terminate assistance in the first situation even if he believes there is noncompliance. He need only to refuse to authorize assistance. Since administrative agencies are accorded a reasonable time to act and there is no deadline they have to meet, the Commissioner is in a relatively strong negotiating position in this situation.

With programs already under way, the Commissioner must terminate assistance if he cannot bring about compliance. The termination must be preceded by "an express finding on the record, after opportunity for hearing, of a failure to comply." Furthermore, the Commissioner must file a full written report of the circumstances and grounds for action with appropriate House and Senate committees, and no termination is to be effective until thirty days after the filing of these reports. The difficulty of securing compliance under this procedure is dramatized by the fact that it was not until March 31, 1966, that the Office of Education mailed its first official notice of a hearing to a school system charged with failure to live up to a desegregation plan previously accepted as compliance with the Guidelines. This notice was mailed to school authorities in Baker County, Georgia, where a USOE reporting team found flagrant violations of the plan and recommended an immediate cutoff of federal funds in September, 1965. In fact, the school authorities conceded in September, 1965, that they were not in compliance, yet they have received federal funds throughout the 1965-66 school year and will continue to do so this spring regardless of the outcome of the hearing.

USOE Bark Worse Than Bite

The notice to the Baker County school system received widespread publicity, but most southern school officials have already seen that the USOE's bark is worse than its bite. Actually, the USOE compliance staff is much too small to cope with the legal and administrative problems posed by the withholding provisions of the Civil Rights Act. In early March of 1966, only fifty-three of the 103 authorized professional positions on the compliance staff were filled, yet there seemed to be little sense of urgency in filling the vacant positions.

The problems of enforcing compliance are also compounded by the requirement in the Civil Rights Act that limits withholding of federal funds to the particular program in the particular political entity, or part thereof, in which non-

compliance is found. Thus if a community gives white pupils preferential treatment in the distribution of equipment purchased under the National Defense Education Act, and if this were established according to the procedures set forth in Title VI, the withholding of Federal funds would nevertheless be limited to this particular program.

The limitation of withholding to the particular political entity concerned also raises some difficult questions. The Clarksdale, Mississippi, School Board is under a court order to desegregate its first two grades. Pursuant to this order, the board drew new attendance zones which included white and Negro pupils. Rather, it included them until the Negro homes were torn down or physically moved to another part of the city as part of an urban renewal program. The urban renewal program was allegedly never discussed with the school board, but it played a key role in keeping the schools segregated. Another cluster of Negro homes near a white school was disannexed by the city, thereby forcing the Negro pupils living in these homes to attend a segregated county school for Negroes. In short, Title VI is inadequate to end discrimination by political entities which act to perpetuate segregation in programs supported by federal funds but which do not themselves receive such funds.

One hopeful development is that, although the Guidelines are criticized for accepting judicial timetables for desegregation, they have already been cited by some courts as a basis for speeding up these timetables. On this score, a June 21, 1965, decision by the Fifth Circuit Federal Court in *Singleton* vs. *Jackson* [Mississippi] *Municipal Separate School District* may presage a basic change in judicial opinion. In the Singleton case, the Negro plantiffs sued to enjoin the Jackson board from proceeding with a grade-a-year plan that had failed to proceed even this slowly. In upholding the injunction, Judge John Minor Wisdom stated that the board should desegregate at least as rapidly as it would have been required to do by the Guidelines. He asserted that judges, who are not educational experts, should not delay desegregation more than administrative agencies set up to rule on these matters. Wisdom also indicated that the court would rely heavily upon the Guidelines and would not reward intransigent school systems by allowing them more time to desegregate than the Guidelines do. Indeed, his opinion went far toward discarding the entire notion of "all deliberate speed" as a prolonged deprivation of the constitutional rights of the Negro plaintiffs.

If widely followed, Wisdom's opinion could have a profound effect upon future developments. Since 1954, the courts have had to grapple with timetables for desegregation without help or guidance from any authoritative educational agency. Instead, the administrative agencies have looked to the courts for guidance. The Singleton case reverses this emphasis. The courts now have a standard which will enable them to get out of the school board business. If they do so by relying upon the Guidelines, desegregation may be speeded up on a broad front.

Title VI is not self-enforcing and local action on a broad scale will be essential to implement it. For this reason, Title VI will result in more, not fewer, protests against discrimination. It may also result in more desegregation by the fall of 1966 than took place between 1954 and 1964. This prediction by its more optimistic supporters is probably accurate, but it tells more about the slow pace of desegregation than the long-range benefits of Title VI. For over a decade, efforts to get a few Negro children in white schools have absorbed a considerable share of the resources of the civil rights movement. The need is for faster progress at the policy-making levels—legislatures, state departments of education, school boards, boards of trustees, and so on. Without effective support for desegregation at these levels, tokenism is likely to prevail for many years to come. One need not derogate tokenism to see this; tokenism may be a necessary point of achievement and departure on the road to full desegregation. Still, it is unfortunate that Section 601 and the Guidelines are focused almost exclusively at the pupil and teacher level while discrimination in the policy-making and administrative echelons of public education are hardly mentioned. At best, Section 601 is essentially a tool whose efficacy will depend in large measure upon when, where, how, and by whom it is wielded. To this observer, indications are that it is being wielded too little and too late to achieve the goal for which it was enacted.

► Some newspapers of the South carried negative comments on the new USOE desegregation guidelines announced late in March. Others carried statements of approval. The following is excerpted from a letter prepared by a group of nineteen Emory University professors and published in the April 1 *Atlanta Constitution*:

" . . . We submit that far from being criticized for pressing for prompt and full compliance with the law, the USOE should be praised for taking action long overdue.

"We further submit that all schoolmen should now face their responsibilities in this matter squarely and immediately set about ending all traces of segregation and discrimination in public education. . . ."